



Virginia
Regulatory
Town Hall

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Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Pharmacy, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC110-20-10 et seq. 18VAC110-50-10 et seq.
Regulation title	Regulations Governing the Practice of Pharmacy Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen
Action title	Administrative fees and alarm system for EMS agencies
Date this document prepared	6/15/10

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The amendments to Chapters 20 and 50 will authorize the Board to charge an administrative fee for providing duplicate licenses (including permits or registrations) and a fee for verification of licensure (including permits or registration).

Additionally, an amendment to section 710 of Chapter 20 will eliminate the requirement for an alarm system for Emergency Medical Services (EMS) agencies that only stock intravenous fluids with no drug additives.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 2, 2010, the Board of Pharmacy amended 18VAC110-20-10 et seq., Regulations Governing the Practice of Pharmacy and 18 VAC110-50-10 et seq., Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards, including the Board of Pharmacy, the responsibility to promulgate regulations and establish renewal schedules:

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title...

The specific authority to control prescription drugs in the Commonwealth is found in the Code of Virginia in Chapters 33 and 34 of Title 54.1.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5401000>

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

In order for the Board of Pharmacy to meet its statutory responsibilities of licensure, inspection and discipline, it is necessary to establish fees sufficient to cover administrative costs. The elimination of a requirement for a security system for certain EMS agencies will make it less burdensome for a few small agencies to carry fluids that may be essential for the stabilization of a patient being transported to the hospital. Any reduction in regulation that makes maintenance of an EMS agency less costly is beneficial and contributes to the health and safety of people in its community.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The amendments are proposed to establish minimal fees for services provided and to eliminate an unnecessary security requirement for EMS agencies. Both are beneficial to the Board and are not expected to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The substance of the amended regulation is to: 1) establish fees sufficient to cover administrative costs relating to verification of licenses, permits and registrations and to issuance of a duplicate license, permit or registration; and 2) eliminate the requirement for a security system for EMS agencies that only stock IV fluids without added drugs.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*
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- 1) The primary advantage to the public is the elimination of an expense for EMS agencies, particularly those who provide limited but essential services in many communities. There are no disadvantages.
- 2) The advantage of two new fees is the realization of some revenue for services provided. There are no disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in this proposal more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

None are affected.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no regulatory methods that will accomplish the objectives of applicable law.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically fees it charges to practitioners or entities for necessary functions of regulation. There would be a one-time expense of less than \$1,000 for promulgation of the amended rule. A public hearing would be heard in conjunction with a regularly scheduled board meeting, and to the extent possible, all notifications would be done electronically to minimize the cost. There are no on-going expenditures for the agency related to amendments to regulations.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The individuals affected by the regulation would be persons who: 1) have lost their license or registration or who need a duplicate original license or registration; and 2) seek verification of a current license, permit or registration.

<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>It is unknown how many persons would be affected by a duplicate license or verification fee since the Board does not currently charge a fee or track the number of requests. Staff estimates that they provide 10 to 20 duplicate licenses per week and respond to 20 to 30 requests for verification. Of the requests for verification, some would come from large health care entities; the others from individuals or small businesses.</p> <p>Of the EMS agencies that hold a controlled substance registration with the board, it is estimated that less than 10 would only stock IV fluids.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no additional costs to the affected individuals or entities.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no alternatives to the proposal, other than continuing to provide services to some individuals that are supported by the licensure fees of all pharmacists and pharmacies. Other boards at DHP have fees for providing duplicate licenses or verification of licensure. The amounts proposed are less than some (Dentistry - \$20 for duplicate license; \$30 for verification) (Funeral - \$15 for duplicate; \$50 for verification) and similar to others (Nursing - \$5 for duplicate; \$25 for verification). Since verification for licensure can be done on the Department website, it is not necessary for persons or institutions to call the Board office for that information. Some states are now restricting licensure verification to electronic verification, so the Board can only continue to provide that service upon payment of a fee of \$25 to cover costs for handling such requests.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact to the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Current requirement	Proposed change and rationale
Chapter 20, Section 20	Establishes fees for permitting, licensure and registration	<p>In subsection H, Miscellaneous fees, two fees are added for provision of a duplicate license or registration and for verification of licensure or registration.</p> <p><i>Both of these services are currently provided by the board at no charge, but the demand has increased with the registration of pharmacy technician so the board is using more staff and fiscal resources to fill the demand. Unlike other boards, Pharmacy has not had such fees because there were relatively fee requests for duplicates or verifications.</i></p>
Chapter 50, Section 20	Establishes fees for permitting of facilities	<p>In subsection I, a fee is added for verification of a license or permits.</p> <p><i>Verification is currently provided by the board at no charge, but there are costs incurred for responding to requests, completion of a verification form and mailing hard copy. Verification can be accomplished on-line without contacting the board; establishment of a fee for verification will not hinder an entity or individual from confirming currency of a license or permit. There are very few requests for duplicates licenses or permits by facilities, so no such fee was added in that chapter.</i></p>
Chapter 20, Section 710	Establishes requirements for storage and security for controlled substances registrants	<p>In subsection E, there is an exception added to eliminate the requirement for an alarm system for EMS agencies that only stock intravenous fluids without any drug added.</p> <p><i>The purpose of an alarm system is to deter pilferage or diversion of drugs. While IV fluids are considered a drug, it is unnecessarily burdensome for EMS agencies that only stock those fluids to have the storage area alarmed.</i></p>